

1. **PARTIES**

The Montana Department of Corrections (DEPARTMENT) and **Billings Public Schools, Lincoln Adult Education Center (CONTRACTOR)** enter into this Contract (**04-047-MWP**). The parties names, addresses, telephone numbers, and Federal Employee Identification Number (Contractor only) is as follows:

Montana Department of Corrections
 Montana Women's Prison
 1539 11th Avenue
 PO Box 201301
 Helena, MT 59620-1301
 (406) 444-3930

Billings Public Schools
C/O Lincoln Adult Education Center
415 North 30th Street
Billings MT 59101
(406) 247-3710

DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

2. **DUTIES/RESPONSIBILITIES OF THE CONTRACTOR**

CONTRACTOR agrees to provide necessary adult basic education and literacy education services to inmates at the Montana Women's Prison (MWP). The goal of these services is to assist inmates to make the personal choice to become more contributing members of society. CONTRACTOR shall provide the following education positions and services:

- A. A certified Adult Basic & Literacy Education (ABLE) teacher that will participate in MWP staffing and be responsible for overseeing and coordinating inmates overall education and vocation plan.
- B. A certified Computer Technology teacher that will participate in MWP staffing and will instruct and assist inmates in the use of ABLE and vocational software applications, as assigned by Computer Technology or ABLE certified teachers. These teachers shall also be responsible for overseeing and coordinating each inmates overall vocational plans and providing inmates with on-site introduction in office skills for the workplace.
- C. Educational Counseling, including career guidance.
- D. CONTRACTOR'S education program hereunder may include:
 - 1. Education Guidance and Counseling
 - 2. Education Assessments
 - 3. Basic GED/Adult Basic & Literacy Education instructional testing
 - 4. Literacy Programs
 - 5. Computer Literacy Programs
 - 6. Vocational Training Program (Computer Skills, Accounting, and Professional certificate in secretarial and/or accounting skills)
 - 7. Job Readiness Programs
 - 8. Educational Grants Management
 - 9. Higher Education Preparation (Assessment, Development, and Coordination)
 - 10. Education Record Keeping
 - 11. Coordination of educational services with Adult Community Corrections, County Detention Facilities, and community ABLE sites. The development of the MWP education program shall be upon the advice and consent of CONTRACTOR.

3. **COMPENSATION/BILLING**

DEPARTMENT shall compensate CONTRACTOR for the delivery of services hereunder in the following manner:

- A. For the services described herein, DEPARTMENT shall pay CONTRACTOR **\$6,816.09 per month**, not to exceed eighty-one thousand, seven hundred ninety-three and 00/100 Dollars (\$81,793.00) for the fiscal year of July 1, 2005 through June 30, 2006 and **\$7,219.75 per month**, not to exceed and eighty-six thousand, six hundred thirty-seven and 00/100 Dollars (\$86,637.00) for the fiscal year of July 1, 2006 through June 30, 2007.
- B. DEPARTMENT agrees to pay CONTRACTOR within 30 days following receipt of a correct invoice.
- C. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.
- D. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

4. **AGENCY ASSISTANCE**

- A. To the extent possible, CONTRACTOR shall use its own equipment in providing the services set forth in Section 2. However, the parties recognize that services provided to DEPARTMENT may occur within the confines of a secure correctional facility necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and telephone service (e.g., Montana Women's Prison does not allow wireless phones within the facility).
- B. DEPARTMENT shall provide CONTRACTOR with: specialized training for School District staff on how to work within a correctional facility; classrooms and computer labs; and cable television service to each classroom to allow for distance learning.

5. **TIME OF PERFORMANCE**

This Contract shall take effect July 1, 2005 and shall terminate on June 30, 2007 unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of five (5) additional years.

6. **LIAISONS AND NOTICE**

- A. Mike Aldrich (247-5117), 701 South 27th, Billings MT 59101 or successor serves as DEPARTMENT liaison.
- B. Woodrow H. Jensen (247-3710), 415 North 30th Street, Billings MT 59101 or successor serves as CONTRACTOR liaison.
- C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, mailed first-class, postage prepaid. All notices sent via U.S. Postal

Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the shared property of DEPARTMENT and CONTRACTOR as it relates to student records for enrollment, attendance, progress (academic, skills, performance) to include specialized programs developed on-site as part of normal expected curriculum development and improvements or as part of grant applications. Educational materials or equipment purchased or developed by CONTRACTOR and brought in for use at MWP will remain the sole property of CONTRACTOR.

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

CONTRACTOR shall provide proof of compliance with Montana's Workers' Compensation laws in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and maintain such insurance, exemption, or corporate officer status for the duration of the contract. CONTRACTOR shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Fiscal Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

9. HOLD HARMLESS AND INDEMNIFICATION

- A. CONTRACTOR agrees that he is financially responsible (liable) for any audit exceptions or other financial loss to DEPARTMENT due to the negligence, intentional acts, or failure for any reason to comply with terms of this Contract.
- B. DEPARTMENT agrees that he is financially responsible (liable) for any audit exceptions or other financial loss to CONTRACTOR due to the negligence, intentional acts, or failure for any reason to comply with terms of this Contract.
- C. CONTRACTOR agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of CONTRACTOR'S employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omission of CONTRACTOR and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.
- D. DEPARTMENT agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of DEPARTMENT employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omission of DEPARTMENT and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

10. INSURANCE

- A. **General Requirements:** CONTRACTOR shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by CONTRACTOR, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

Primary Insurance: CONTRACTOR'S insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of CONTRACTOR'S insurance and shall not contribute with it.

Certificate of Insurance/Endorsements: A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages must be received by the Contracts Manager, PO Box 201301, Helena, MT 59620-1301 prior to start of work under this Contract. CONTRACTOR must immediately notify DEPARTMENT of any material change in insurance coverage, such as changes in limits, coverages, policy status, etc. DEPARTMENT reserves the right to require complete copies of insurance policies at all times.

- B. **Specific Requirements for Commercial General Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of CONTRACTOR, including the insured's general supervision of CONTRACTOR; products and completed operations; premises owned, leased, occupied, or used.

11. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

12. PUBLIC INFORMATION

CONTRACTOR and DEPARTMENT recognize that this Contract is subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution.

13. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligation of this Contract and any transferee or

subcontractor shall be considered the agent of CONTRACTOR. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

14. AMENDMENTS

All amendments to this Contract shall be in writing and signed by the parties.

15. COMPLIANCE WITH LAWS

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

16. TERMINATION AND DEFAULT

- A. DEPARTMENT or CONTRACTOR may, by written notice to the other, terminate this Contract in whole or in part at any time the other fails to perform as required in this Contract.
- B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.
- C. DEPARTMENT, at its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.
- D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

17. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

18. ARBITRATION

Any Claim arising out of, or related to, this Contract shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Judgment on the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

19. INTEGRATION

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

20. SEVERABILITY

A declaration by any court, or any other binding legal source, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

21. COMPLETED CONTRACT

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Fiscal Bureau, PO Box 201301, 1539 11th Avenue, Helena, MT 59620-1301.

SIGNATURE**DEPARTMENT****CONTRACTOR**

Jo Acton, Warden
Montana Women's Prison

Woodrow H. Jensen, Director
Adult Education

Date

Date

Approved for Legal Content by:

Legal Counsel
Department of Corrections

Date